

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DIVISION DISTRICT OF LOUISIANA,
SHREVEPORT DIVISION

UNITED STATES OF AMERICA
Plaintiff

CIVIL ACTION NO. 5:11-CV-01781

VERSUS

JUDGE DONALD E. WALTER

JAMES BALLENGEE,
LISBON PROCESSING, L.L.C. ,
And
LISBON REFINERY J.V., L.L.C.
Defendants

MAGISTRATE JUDGE MARK L. HORNSBY

**RESPONSE BY DEFENDANTS, JAMES BALLENGEE, LISBON
PROCESSING, L.L.C., AND LISBON REFINERY J.V., L.L.C., TO
PLAINTIFF'S, THE UNITED STATES OF AMERICA'S,
FIRST SET OF REQUESTS FOR ADMISSION
(CERTIFICATE DATED MAY 18, 2012)**

NOW, appearing through their undersigned counsel of record, come defendants, James Ballengee, Lisbon Processing, L.L.C., and Lisbon Refinery J.V., L.L.C. (hereinafter collectively referred to as "**Defendants**"), and now, in response to plaintiff's, the United States of America's, (hereinafter "**Plaintiff**") First Set of Requests for Admission, aver as follows:

**GENERAL OBJECTIONS TO PLAINTIFF'S
FIRST SET OF REQUESTS FOR ADMISSION**

Defendants, James Ballengee, Lisbon Processing, L.L.C. and Lisbon Refinery J.V., L.L.C., generally object to the plaintiff's First Set of Requests for Admission as follows:

Defendants generally object to plaintiff's Instruction No. 3 as being overly broad and excessively broad in that its purports to cover all information not only in defendants' possession, custody and control, but also information in the "possession, custody and control" of "officers,

employees, agents, servants, representatives, attorneys, or other persons directly or indirectly employed or retained by any Defendant, or anyone else acting on a Defendant's behalf or otherwise subject to its control, and any merged, consolidated, or acquired predecessor or successor." Defendants believe that this instruction is impermissibly broad and burdensome. Defendants also object that this Instruction is vague, ambiguous and confusing as well.

Defendants also generally object to the definition of "Creek" or "the Creek" as it seems to suggest that this unnamed creek or ditch perpetually has and/or contains water, while defendants believe the evidence will show that it only intermittently holds and/or has water. Also, the definition seems to suggest that the "discharge", which occurred on or about June 21, 2007, was intentional or deliberate, as opposed to having occurred accidentally, and it is objected to on that basis as well.

Defendants also generally object to the definition of "Employee" under the Definition Section as being overly broad in that "Employee" is defined to include not only a person "who was hired for a wage, salary, fee," but also any person who has received any "payment to perform work for any Defendant." Defendants also generally object that, in addition, this definition is vague, ambiguous and confusing. Defendants intend to respond to plaintiff's Requests for Admission containing the word "Employee" by limiting themselves to the traditional definition of "Employee", which is "one employed by another usually for wages or salary and in a position below the executive level."

Defendants also generally object to the definition of "Spill" or "the Spill" to the extent plaintiff means to suggest that the "discharge" which occurred on or about June 21, 2007, was intentional or deliberate, as opposed to having occurred accidentally.

Defendants also generally object to the definition of “You” as being excessively and overly broad in that it purports to include not only defendants and any agent or employee of defendants, but also “experts”, “attorneys” and “persons who have access to the requested information and from whom defendants can obtain such information.” Defendants believe this is an impermissibly broad definition of “You”.

Subject to these general objections, defendants further respond as follows:

RESPONSE TO REQUESTS FOR ADMISSION

“REQUEST FOR ADMISSION NO. 1:

Admit that, throughout the relevant period, James Ballengee was a Member and Manager of Lisbon Processing, L.L.C.”

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Admit.

“REQUEST FOR ADMISSION NO. 2:

Admit that, throughout the relevant period, James Ballengee was a Member and Manager of Lisbon Refinery J.V, L.L.C.”

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Admit.

“REQUEST FOR ADMISSION NO. 3:

Admit that, throughout the relevant period, James Ballengee was President and CEO of Taylor Gas Liquids, Inc.”

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Denied.

“REQUEST FOR ADMISSION NO. 4:

Admit that, throughout the relevant period, James Ballengee was President and CEO of Taylor Propane Gas, Inc.”

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Denied.

“REQUEST FOR ADMISSION NO. 5:

Admit that, throughout the relevant period, James Ballengee was a Member and/or Manager of Hillsboro Processing, L.L.C.”

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Denied.

“REQUEST FOR ADMISSION NO. 6:

Admit that, throughout the relevant period, James Ballengee was a Member and Manager of Taylor Transfer Services, L.L.C.”

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Denied.

“REQUEST FOR ADMISSION NO. 7:

Admit that, throughout the relevant period, Karen Courtman was a Manager for both Lisbon Processing, L.L.C. and Hillsboro Processing, L.L.C.”

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Denied.

“REQUEST FOR ADMISSION NO. 8:

Admit that on or about June 23, 2007, James Ballengee instructed Ms. Karen Courtman to continue receiving and processing product at the Facility until instructed otherwise.”

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Denied.

“REQUEST FOR ADMISSION NO. 9:

Admit that on or about March 6, 2007, James Ballengee directed staff at the Facility to conduct daily product inventories.”

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Admit.

“REQUEST FOR ADMISSION NO. 10:

Admit that, during one or more periods during the relevant period, James Ballengee personally directed the operations at the Facility.”

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Admit.

“REQUEST FOR ADMISSION NO. 11:

Admit that in April of 2007 James Ballengee requested that he be sent a daily e-mail update on tank repairs at the Facility.”

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Admit.

“REQUEST FOR ADMISSION NO. 12:

Admit that beginning in late April or May of 2007 James Ballengee began receiving regular updates on operations at the facility.”

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Admit.

“REQUEST FOR ADMISSION NO. 13:

Admit that, in May of 2007 James Ballengee directed staff at the Facility to inform him of any expense in excess of \$500.00.”

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Admit.

“REQUEST FOR ADMISSION NO. 14:

Admit that, during the relevant period, James Ballengee was the principal decision-maker regarding environmental compliance and cleanup at the Facility .”

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Admit.

“REQUEST FOR ADMISSION NO. 15:

Admit that James Ballengee personally directed Lisbon Processing, L.L.C.’s response to the Spill.”

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Admit.

“REQUEST FOR ADMISSION NO. 16:

Admit that James Ballengee entered into one or more agreements with outside contractors for the cleaning and repair of petroleum storage tanks at the Facility.”

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Admit.

“REQUEST FOR ADMISSION NO. 17:

Admit that in May of 2007 James Ballengee approved the payment of invoices related to the Facility.”

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Admit.

“REQUEST FOR ADMISSION NO. 18:

Admit that in May of 2007 Karen Courtman informed James Ballengee that solid waste was still present at the facility and that an obligation to determine whether it was hazardous waste or non-hazardous waste existed.”

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Admit, but only to the extent of the material which was being taken out of the tanks as a result of and/or during on-going tank repairs. Denied as to any other interpretation or implication.

“REQUEST FOR ADMISSION NO. 19:

Admit that the only petroleum products accepted for storage or processing at the facility between August 2006 and August 2007 were natural gasoline and light straight run.”

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Admit.

“REQUEST FOR ADMISSION NO. 20:

Admit that there was a spill of hydrocarbons from Tank J on or before May 17, 2007.”

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Denied.

“REQUEST FOR ADMISSION NO. 21:

Admit that defendants did not notify LDEQ, EPA, or any other government entity that the spill referred to in Admission No. 20 occurred.”

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Admit, but deny that any “spill” occurred and/or that any “spill” occurred which required notification.

“REQUEST FOR ADMISSION NO. 22:

Admit that there was a spill of hydrocarbons from Tank E on or before June 26, 2007”

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Denied.

“REQUEST FOR ADMISSION NO. 23:

Admit, that Defendants did not notify LDEQ, EPA, or any other government entity that this spill occurred.”

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Admit, but deny that any “spill” occurred and/or that any “spill” occurred which required notification.

“REQUEST FOR ADMISSION NO. 24:

Admit that there was a spill of hydrocarbons from Tank M on or about June 23, 2007.”

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Denied.

“REQUEST FOR ADMISSION NO. 25:

Admit that Defendants did not notify LDEQ, EPA, or any other government entity that this spill occurred.”

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Admit, but deny that any “spill” occurred and/or that any “spill” occurred which required notification.

“REQUEST FOR ADMISSION NO. 26:

Admit that there was a spill of hydrocarbons from Tank L on or before June 29, 2007.”

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Denied.

“REQUEST FOR ADMISSION NO. 27:

Admit that Defendants did not notify LDEQ, EPA, or any other government entity that this spill occurred.”

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Admit, but deny that any “spill” occurred and/or that any “spill” occurred which required notification.

“REQUEST FOR ADMISSION NO. 28:

Admit that Thermacam GasFindIR cameras are commonly used in the petroleum industry to detect gas leaks.”

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Denied.

“REQUEST FOR ADMISSION NO. 29:

Admit that a Thermacam GasFindIR camera can accurately detect leaks of methane and other volatile organic compounds.”

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Denied.

“REQUEST FOR ADMISSION NO. 30:

Admit that during the March 2007 inspection of the facility, Tanks D4 and F6 were leaking vapors through their roof vents.”

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Denied.

“REQUEST FOR ADMISSION NO. 31:

Admit that as of April 11, 2007, Tank F6 was leaking vapors through its roof vent.”

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Denied.

“REQUEST FOR ADMISSION NO. 32:

Admit that as of July 5, 2007 Tanks A1, B2, C3, D4, and F6 were leaking vapors through their roof vents.”

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Denied.

“REQUEST FOR ADMISSION NO. 33:

Admit that as of July 25, 2007 Tanks A1, B2, C3, D4, F6 and I9 were leaking vapor through their roof vents.”

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

Denied.

“REQUEST FOR ADMISSION NO. 34:

Admit that as of June 21-23, 2007, the applicable Louisiana water quality standard for protection of human health from benzene for non-drinking water supply waters was 12.5 micrograms/liter.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Admit.

“REQUEST FOR ADMISSION NO. 35:

Admit that on June 22, 2007, the benzene concentration in the Creek was tested to between 3581 micrograms/liter and 5910 micrograms/liter.”

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

Defendants admit that, on June 22, 2007, the benzene concentration in the unnamed creek or ditch was tested to 3,581 micrograms per liter. Denied as to the remainder of this Request.

“REQUEST FOR ADMISSION NO. 36:

Admit that on June 22, 2007, at the junction of the Creek and Fivemile Creek, the benzene concentration was tested to be 21.0 micrograms/liter.”

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

Admit.

“REQUEST FOR ADMISSION NO. 37:

Admit that on June 22, 2007, upstream of where Fowler Road crosses Fivemile Creek, the benzene concentration was found to be 16.1 micrograms/liter.”

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Denied.

“REQUEST FOR ADMISSION NO. 38:

Admit that on June 23, 2007, at a point south of where Fowler Road crosses Fivemile Creek, the benzene concentration was found to be 30 micrograms/liter.”

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Denied.

“REQUEST FOR ADMISSION NO. 39:

Admit that the spill discharged benzene into the Creek in concentrations that violated the applicable Louisiana water quality standards.”

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

Admit.

“REQUEST FOR ADMISSION NO. 40:

Admit that the spill cause[d] benzene concentrate in Fivemile Creek to exceed the applicable Louisiana water quality standards.”

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

Denied.

“REQUEST FOR ADMISSION NO. 41:

Admit that on or about June 21, 2007, there existed a gap in the protective dike around the tanks.”

RESPONSE TO REQUEST FOR ADMISSION NO. 41:

Admit.

“REQUEST FOR ADMISSION NO. 42:

Admit that the dike around the tanks failed to contain the spill.”

RESPONSE TO REQUEST FOR ADMISSION NO. 42:

Admit.

“REQUEST FOR ADMISSION NO. 43:

Admit that defendants failed to ensure that the dike was impervious so as to prevent the release of petroleum liquids.”

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

Admit, to the extent that the dike around the tanks failed to contain the spill. The dike had been partially removed/altered in order to make improvements to the tanks in order to comply with air regulations.

“REQUEST FOR ADMISSION NO. 44:

Admit that on or about June 22, 2007, a representative from Lisbon Processing accompanied representative(s) of LDEQ on a tour of the Creek impacted by the Spill.”

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

Denied.

“REQUEST FOR ADMISSION NO. 45:

Admit that on the day after the Spill, on or about June 22, 2007, the Creek was a reddish-brown color.”

RESPONSE TO REQUEST FOR ADMISSION NO. 45:

Admit.

“REQUEST FOR ADMISSION NO. 46:

Admit that on the day after the Spill, on or about June 27, 2007, the Creek had a sheen on its surface.”

RESPONSE TO REQUEST FOR ADMISSION NO. 46:

Admit.

“REQUEST FOR ADMISSION NO. 47:

Admit that the petroleum liquids discharged from Tank I9 caused a film or sheen upon the surface of the Creek.”

RESPONSE TO REQUEST FOR ADMISSION NO. 47:

Admit.

“REQUEST FOR ADMISSION NO. 48:

Admit that the petroleum liquids discharged from Tank I9 caused a discoloration of the surface of the Creek.”

RESPONSE TO REQUEST FOR ADMISSION NO. 48:

Admit.

“REQUEST FOR ADMISSION NO. 49:

Admit that petroleum liquids released during the Spill were recovered by Defendants or Defendants’ contractors at or near an earthen dam constructed to contain the spill.”

RESPONSE TO REQUEST FOR ADMISSION NO. 49:

Admit.

“REQUEST FOR ADMISSION NO. 50:

Admit that in the immediate aftermath of the Spill there were numerous wildlife deaths in the area in and around the Creek.”

RESPONSE TO REQUEST FOR ADMISSION NO. 50:

Denied.

“REQUEST FOR ADMISSION NO. 51:

Admit that tanks at the Facility are located within one hundred yards of the Creek.”

RESPONSE TO REQUEST FOR ADMISSION NO. 51:

Denied.

“REQUEST FOR ADMISSION NO. 52:

Admit that Defendants did not make a hazardous waste determination for the water in Tank K1 until approximately December 21, 2007.”

RESPONSE TO REQUEST FOR ADMISSION NO. 52:

Admit.

“REQUEST FOR ADMISSION NO. 53:

Admit that after being notified that it was storing petroleum liquids with Reid Vapor Pressures in excess of its permit limits, Defendant Lisbon Refinery completed removal of the petroleum liquids from the Facility in August 2009.”

RESPONSE TO REQUEST FOR ADMISSION NO. 53:

Denied.

“REQUEST FOR ADMISSION NO. 54:

Admit that vapor pressures recorded on produce shipping tickets are records of the “true vapor pressure” of those products.”

RESPONSE TO REQUEST FOR ADMISSION NO. 54:

Denied.

“REQUEST FOR ADMISSION NO. 55:

Admit that the records of the vapor pressures of petroleum products loaded onto trucks for delivery to the Facility accurately reflect the vapor pressure of those petroleum products when stored in tanks at the facility.”

RESPONSE TO REQUEST FOR ADMISSION NO. 55:

Denied.

“REQUEST FOR ADMISSION NO. 56:

Admit that at 70 degrees Fahrenheit, natural gasoline has a true vapor pressure of between 10 and 15 psia.”

RESPONSE TO REQUEST FOR ADMISSION NO. 56:

Denied.

“REQUEST FOR ADMISSION NO. 57:

Admit that natural gasoline stored at the Facility reached temperatures of at least 75 degrees Fahrenheit.”

RESPONSE TO REQUEST FOR ADMISSION NO. 57:

Admit.

“REQUEST FOR ADMISSION NO. 58:

Admit that natural gasoline stored at the Facility reached temperatures of at least 80 degrees Fahrenheit.”

RESPONSE TO REQUEST FOR ADMISSION NO. 58:

Admit.

“REQUEST FOR ADMISSION NO. 59:

Admit that natural gasoline stored at the Facility reached temperatures of at least 85 degrees Fahrenheit.”

RESPONSE TO REQUEST FOR ADMISSION NO. 59:

Admit.

“REQUEST FOR ADMISSION NO. 60:

Admit that natural gasoline stored at the Facility regularly reached temperatures of at least 90 degrees Fahrenheit.”

RESPONSE TO REQUEST FOR ADMISSION NO. 60:

Denied.

“REQUEST FOR ADMISSION NO. 61:

Admit that in June or July of 2007, Defendants proposed to install chillers to lower the temperature of petroleum liquids stored in tanks at the Facility in order to reduce the vapor pressure of the liquids.”

RESPONSE TO REQUEST FOR ADMISSION NO. 61:

Admit.

“REQUEST FOR ADMISSION NO. 62:

Admit that the maximum true vapor pressure of at least some petroleum liquids stored at the Facility in 2007 was greater than 11.1 psia.”

RESPONSE TO REQUEST FOR ADMISSION NO. 62:

Admit.

“REQUEST FOR ADMISSION NO. 63:

Admit that the maximum true vapor pressure of petroleum liquids stored at the Facility in 2007 was greater than 11.1 psia.”

RESPONSE TO REQUEST FOR ADMISSION NO. 63:

Admit.

“REQUEST FOR ADMISSION NO. 64:

Admit that the purchase contracts for natural gasoline delivered to the Facility in 2006-2007 indicate that material had a maximum true vapor pressure greater than 11.1 psia.”

RESPONSE TO REQUEST FOR ADMISSION NO. 64:

Denied.

“REQUEST FOR ADMISSION NO. 65:

Admit that the MSDSs for natural gasoline delivered to the Facility in 2006-2007 indicate that that product had a maximum true vapor pressure of greater than 11.1 psia.”

RESPONSE TO REQUEST FOR ADMISSION NO. 65:

Denied.

“REQUEST FOR ADMISSION NO. 66:

Admit that the shipping manifests for natural gasoline delivered to the Facility in 2006-2007 indicate that that product had a maximum true vapor pressure of greater than 11.1 psia.”

RESPONSE TO REQUEST FOR ADMISSION NO. 66:

Denied.

“REQUEST FOR ADMISSION NO. 67:

Admit that at least some of the petroleum liquids stored in Tank J10 in between August 2006 and March 21, 2007, had a maximum true vapor pressure of over 11.1 psia.”

RESPONSE TO REQUEST FOR ADMISSION NO. 67:

Denied.

“REQUEST FOR ADMISSION NO. 68:

Admit that on March 21, 2007, a representative of one or more defendants stated that the seals on Tank J10 had failed.”

RESPONSE TO REQUEST FOR ADMISSION NO. 68:

Denied.

Respectfully submitted,

**ROEDEL PARSONS KOCH BLACHE
BALHOFF & McCOLLISTER**

BY:

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Attorneys for Defendants, James Ballengee,

Lisbon Processing, L.L.C.,

And Lisbon Refinery J.V., L.L.C.

CERTIFICATE

I hereby certify that the above and foregoing has this been sent to all counsel via e-mail
and U.S. Mail.

Baton Rouge, Louisiana, this 18th day of July 2012.

Thomas E. Balhoff
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